

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SILVIA GONZALEZ and MARTHA MENDOZA  
GONZALEZ, individually and on  
behalf of others similarly situated,

**ORDER**

Plaintiffs,

**10-CV-1000 (NGG) (RML).**

-against-

JANE ROE INC., an unknown corporation doing  
business as ROMY'S NAILS, and ROMELIA  
AGUDO, GALO AGUDO, and JULIA PACUAR,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiffs Sylvia Gonzalez and Martha Mendoza Gonzalez commenced this action on March 5, 2010, asserting claims for unpaid minimum and overtime wages and spread-of-hours damages under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., and the New York Labor Law ("NYLL"), N.Y. Lab. Law §§ 650, et seq. (Compl. (Dkt. 1).) On August 20, 2014, the court adopted in full the Report and Recommendation of Magistrate Judge Robert M. Levy that Plaintiff's motion for summary judgment against Defendant Romelia Agudo be granted as to liability, and directed the parties to appear before Judge Levy on October 15, 2014 for a hearing on damages. (See July 24, 2014, Report & Recommendation (Dkt. 41); Aug. 19, 2014, Order (Dkt. 42).)

On October 15, 2014, Judge Levy held an inquest hearing on damages. (See Oct. 15, 2014, Min. Entry; Am. Tr. of Oct. 15, 2014, Hr'g (Dkt. 44).) On July 15, 2015, Judge Levy issued a Report and Recommendation (the "R&R") recommending that the court award

Plaintiffs damages in the aggregate amount of \$155,351.08, plus prejudgment interest in an amount to be later calculated, against Defendant Romelia Agudo.<sup>1</sup> (R&R (Dkt. 45).)

No party has objected to Judge Levy's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 17 ("Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with courtesy copies to Judge Garaufis and to my chambers, within fourteen (14) days. Failure to file objections within the specified time waives the right to appeal the district court's order.").) Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM), 2010 WL 985294, at \*1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1); see also Porter v. Potter, 219 F. App'x 112 (2d Cir. 2007) (summary order).

The court ADOPTS Judge Levy's R&R, but MODIFIES the R&R to clarify that prejudgment interest should be calculated through the date of entry of judgment, as set out in footnote 12—as opposed to footnote 10—of the R&R. (See R&R at 13 n.12, 17.)

Accordingly, the court ADOPTS IN PART and MODIFIES IN PART the R&R. Plaintiffs are awarded total aggregate damages in the amount of \$155,351.08, plus prejudgment interest on a subset of those damages through the date of entry of judgment, against Defendant Romelia Agudo. Prejudgment interest shall be calculated by the Clerk of Court at the rate of nine percent (9%) per annum solely for the following damages awards: (1) Silvia Gonzalez's spread-of-hours damages of \$10,840.80, from November 1, 2006, through the date of entry of judgment; (2) Silvia Gonzalez's unpaid NYLL minimum wages and overtime wages of \$37,118.63, from September 3, 2005, through the date of entry of judgment; and (3) Martha

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<sup>1</sup> In the R&R, Judge Levy noted that Romelia Agudo is the sole remaining Defendant in this action. (See R&R (Dkt. 45) at 1 n.1.) The Clerk of Court is respectfully directed to terminate all other Defendants.

Mendoza Gonzalez's NYLL unpaid minimum wages, overtime wages, and spread-of-hours damages of \$7,351.80, from July 16, 2005, through the date of entry of judgment. (See R&R at 13 n.12.)

The Clerk of Court is respectfully directed to enter Judgment in favor of Plaintiffs against Defendant Romelia Agudo, and to close this case.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York  
August 5, 2015

NICHOLAS G. GARAUFIS  
United States District Judge